IN THE HIGH COURT OF BOMBAY AT GOA
SECOND APPEAL NO.108 OF 2005

Shri Vaicunt Purushottam Naik Chodankar. .. Appellant

Vs.

Shri Lamberta Gomes .. Respondent

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Shri J.P.Mulgaonkar, Advocate for the appellant.

Ms A.A.Agni, Advocate for the respondent.

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CORAM : R.M.S.KHANDEPARKAR, J
DATED : 16th January, 2006.

P.C.

1. The lower appellate Court, after detail analysis of the evidence on record, has arrived at the finding about failure on the part of the appellant to establish his right to continue to be in possession of the suit premises. Undisputedly, the defence of the appellant before the trial Court was that he has become the owner of the suit garage by adverse possession as well as by prescription. It is to be noted that the plea of acquisition of title by prescription was not taken either as an alternative plea or without prejudice to the plea of adverse possession but the plea was to the effect that “the defendant therefore has become the owner of the said garage by adverse possession and by prescription.” Besides, the plea of adverse

possession is absolutely vague. In the circumstances, both the Courts have found that the appellant has not been able to establish any right as such to continue to be in possession of the suit garage. Though the trial Court, on wrong assumption, had held that merely because the appellant has been in possession of the suit premises for long time the relief of eviction could not be granted, the lower appellate Court on correct appreciation of evidence and on proper application of law to the facts of the case has decreed the suit. The impugned judgment does not suffer from any infirmity and all findings arrived at are clearly borne out from the record. It does not call for interference under Section 100 of the Code of Civil Procedure.

2. In the facts and circumstances of the case, no substantial question of law has arisen in the present appeal, hence the appeal is rejected. The respondent shall not execute the decree for a period of three months from today.

R.M.S.KHANDEPARKAR, J